IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 89 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATWARBHAI MULJIBHAI CHAUHAN - Applicant(s)
Versus
HANSABEN NATWARBHAI CHAUHAN & 1 - Respondent(s)

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Appearance :
MR BHARAT K DAVE for Applicant(s) : 1,
MR RAMNANDAN SINGH for Respondent(s) : 1,
MS PANCHAL, APP, for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 08/08/2007

ORAL JUDGMENT

Applicant – husband has filed this Revision Application u/s. 397 r/w Section 401 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) and challenged the Judgment and order dated 17.11.2003

passed by the learned JMFC, Vadodara in Miscellaneous Criminal Application No.50 of 2003, wherein the learned JMFC enhanced the amount of maintenance from Rs.300/- p.m. to Rs.500/- p.m. in the proceedings u/s. 127 of Cr.P.C.

The respondent – wife filed an Application u/s. 127 Cr.P.C., 1973, for enhancement of the maintenance awarded by the Court in Criminal Miscellaneous Application No.332 of 1996 from Rs.300/- pm to Rs.1500/- pm on the ground that she had two children out of marriage and they are son Nirav, aged about 19 years and a daughter Parul, aged about 17 years; that both the children stay with husband and son Nirav is earning Rs.2000/- pm; that on account of high cost of living and as she has no source of income other than the amount of maintenance awarded by the Court, she is unable to meet with the expenses and, therefore, the amount of maintenance is required to be enhanced to Rs.1500/- pm.

The learned trial Judge, after appreciating the evidence before him came to conclusion that though there is no increase of salary of husband, but on account of rise in cost of living and also considering the fact that the husband is paying rs.1200/- pm to the wife in HMP No. 196/97, the amount of maintenance is required to be enhanced to Rs.500/- pm. Therefore, awarded Rs.500/- pm towards the maintenance to the respondent – wife from the date of Application and also awarded cost of Rs.500/-. Being aggrieved by the said Judgment and order passed by the learned JMFC the applicant –

husband has preferred this Revision application.

I have heard learned Advocate Mr. Dave for the applicant – husband, learned Advocate Mr. Ramanandan Singh for the respondent No.1 – wife and Ms. Panchal, learned APP for respondent No.2 – State at length and in great detail.

It is settled proposition of law that this court has very limited scope u/s. 397 Cr.P.C., 1973, and the Court can not re-appreciate the evidence adduced before the trial Court. It appears that the trial Court, after considering the evidence adduced before it, came to conclusion that the Civil Court had awarded amount of Rs.1200/- towards maintenance u/s.24 of the Hindu Marriage Act, 1955. The Court also considered that the applicant husband was depositing Rs.300/- pm being the amount of maintenance awarded to the respondent – wife in proceedings u/s.125 of Cr.P.C. and was being deposited towards marriage expenses of his daughter as per order of the Court and thereby the applicant – husband is paying Rs.1500/- pm towards maintenance to the respondent – wife. The observation also indicates that there is no increase in the salary of the applicant – husband since 1996, but there is rise in cost of living and, therefore, the respondent – wife is entitled for enhancement in the maintenance as she would not be in a position to maintain herself from the amount of Rs.1200/- pm being the amount of maintenance awarded to her in the civil proceeding. The observation of the trial Court indicates that the learned trial Judge while coming to the conclusion

that the respondent – wife is entitled for enhancement of maintenance amount considered a fact that there is rise in cost of living. In the decision of **LATILUNNISA USMANKHAN v/s. SAIYED ASHRAFALI AHMADALI & ANR.,** reported in 1986 GLR 254 this court held that the Sessions Judge while exercising the revisional jurisdiction u/s.397 of the Code can not interfere with the appreciation of the evidence of the trial Magistrate. Similarly, in decision of **PATHUMMA & ANR. v/s. MUHAMMAD,** reported in 1986 GLH 788, the Hon'ble Supreme Court held that High Court was not justified in revisional jurisdiction in making re-assessment of the evidence led before the trial Court for the award of maintenance u/s.125 of the Cr.P.C. In view of this settled proposition of law, in my view, this Court can not re-appreciate the evidence adduced before the trial Court. Therefore, the learned trial Magistrate was justified in passing the impugned order after considering the evidence produced before him and it cannot be said that the learned JMFC committed an error in exercising the jurisdiction vested in him and the Judgment and order is perverse.

In view of the above, this Revision Application fails and stands dismissed. Rule discharged.

(BANKIM.N.MEHTA,J.)

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